

### **REMARKS**

Claims 1, 3, 4, 6, 8-10, 12, 14-28, and 34-45 are pending in the application, of which claims 14-16, 18-28, 30-33, and 35 are withdrawn as being directed to a non-elected invention. By this Amendment, claims 1 are 36 are amended. No new matter is added. Prompt and favorable consideration of these claims is respectfully requested.

### **Claim Rejections - 35 U.S.C. § 102**

Claims 1, 3, 4, 6, 8-10, 12, 17, 34, 36-39, and 41-42 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,876,749 ("Killion"). Applicants request reconsideration and withdrawal of the rejection of these claims for at least the following reasons.

Applicants respectfully submit that the Killion reference fails to disclose, or even suggest, *inter alia*, "**one or more channels for allowing sound to pass through the one or more sound inlet ports to the one or more microphones.**" as recited in amended claim 1.

As shown in an example embodiment, FIG. 2 illustrates the sound inlet part 6 provided with a number of **channels 7** allowing the sound to proceed to the sound inlet aperture 12. By controlling the size and/or amount of the **channels 7**, the damping of the microphone signal may be controlled. As such, no external damping grid need to be applied, resulting in a cost effective and less complex design of the microphone. *See paragraphs [0062] and [0063] of the corresponding published application.*

The Killion reference fails to disclose or even mention the "channels" for allowing sound to pass through the one or more sound inlet ports to the one or more microphones. The sound inlet ports 7, 9, 11, 13, 43, 45, 47, 49, 77, 79 as alleged

corresponding to the "sound inlet ports" do not include "channels" as taught by claim 1.

Moreover, the Killion reference fails to disclose or even suggest "the one or more electrical controlling devices form part of the one or more sound inlet ports and can be operated by the user without affecting the configuration of the one or more sound inlet ports and without affecting the configuration of the one or more channels for allowing sound to pass through the one or more sound inlet ports to the one or more microphones." as recited in amended claim 1.

The Killion reference, on the other hand, discloses the switch 10 (corresponding to the electrical control device) operated by the user being controlled by the sound inlet ports 7 and 13 to change the configuration, i.e., switching between a directional mode and an omnidirectional mode by sliding the actuator switch 10 between positions where the sound inlet 13 is covered and uncovered. Therefore, since the switch 10 of Killion affect the configuration of inlet ports 7 and 13, it fails to disclose or suggest all the claimed features. In particular, the Killion reference fails to disclose or suggest "the one or more electrical controlling devices form part of the one or more sound inlet ports and can be operated by the user **without affecting the configuration of the one or more sound inlet ports** and **without affecting the configuration of the one or more channels** for allowing sound to pass through the one or more sound inlet ports to the one or more microphones," as recited in amended claim 1.

Since the Killion reference fails to disclose each and every element of claim 1, it cannot provide a basis for a rejection under 35 U.S.C. § 102(e) and, thus, is allowable. Claims 3, 4, 6, 8-10, 12, 17, and 34 depend from amended claim 1 and, therefore, allowable for the similar reasons discussed above with respect to claim 1.

Claim 36 is also allowable for the similar reasons as discussed above regarding claim 1. In particular, claim 36 recites "a channel for allowing sound to pass through the sound inlet port to a microphone."

For at least these reasons, the Examiner is respectfully requested to reconsider and withdraw the § 102(a) rejection of claims 1, 3, 4, 6, 8-10, 12, 17, 34, 36-39, and 41-42.

**Claim Rejections - 35 U.S.C. § 103**

Claims 9, 12, 40 and 43-45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Killion. Applicants respectfully traverse this rejection for the reasons discussed below.

Claims 9, 12, 40 and 43-45 are believed to be allowable for at least the reasons set forth above regarding claim 1. Since claims 9, 12, 40 and 43-45 are patentable at least by virtue of their dependency on independent claim 1, Applicants respectfully request that the rejection of claims 9, 12, 40 and 43-45 under 35 U.S.C. § 103(a) be withdrawn.

Claims 1, 3, 4, 6, 8-10, 12, 17, 34, and 36-45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Darbut et al. ("Darbut"), U.S. Patent 6,597,793 in view of Killion. Applicants respectfully traverse this rejection for the reasons discussed below.

In order establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), the U.S. Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.*<sup>1</sup> noted that the rejection must establish a reasoning that it would have been obvious for one of ordinary skill in the art to have combined the teachings of the cited document(s). One way to establish

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<sup>1</sup> 550 U.S. at 398, 82 USPQ2d at 1396 (2007).

this would be to show "some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness" and "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does."<sup>2</sup> In addition, the cited document(s), when combined or modified, must teach or suggest all of the claim limitations of the rejected claims.<sup>3</sup>

Applicants respectfully submit that the proposed combination of references does not meet these criteria. In particular, the rejection fails to demonstrate that one of ordinary skill in the art would have combined the teachings of the Darbut and the Killion references in the manner used to reject the claims, and the applied references fail to teach and suggest *all* of the claim elements.

For example, in the outstanding Office Action, the rejection is based on an assertion that:

it would have been obvious to one skilled in the art to provide the controlling device or the switching mechanism (15) of Darbut being an electrical device, as taught by Killion et al. for better sensing the position of the actuator switch and selecting a microphone output base on the position sensed.<sup>4</sup>

Applicants respectfully submit, however, that the above statement is merely conclusory and is not an "explicit rational" as required by *KSR Int'l*. Therefore, because the Examiner has not provided an explicit analysis as required by *KSR Int'l*, a *prima facie* case of obviousness has not been established.

Even if *arguendo*, the teachings of the Darbut and the Killion references were to be combined, they would nonetheless fail to teach each and every element of the rejected claims. In particular, Applicants respectfully submit that the Darbut and the Killion references fail to teach or suggest, *inter alia*, "the one or more electrical

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<sup>2</sup> *Id.*

<sup>3</sup> *In re Vaack*, 947, F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

<sup>4</sup> See Final Office Action, mailed January 22, 2009, page 7, second full paragraph.

controlling devices can be operated by the user without affecting the configuration of the one or more sound inlet ports," as recited in amended claim 1.

The Darbut reference discloses a hearing aid construction 10 having a switch with "a mechanical switching mechanism 15" (Darbut, col. 2, line 38, and Fig. 1). The Darbut reference hearing aid construction 10 includes a directional microphone 26 having first and second acoustic ports 30 and 32 (Darbut, col. 2, lines 48-57, and Figs. 2 and 3). The mechanical switching mechanism 15 rotates relative to the microphone 26 between different positions to establish different acoustic paths and to thereby shift the microphone construction between a directional mode and an omnidirectional mode (Darbut, col. 4, lines 25-43). The switching is done exclusively by moving mechanical parts; no electrical parts are involved.

Therefore, because the proposed combination of the Darbut and the Killion references fails to teach or suggest *all* of the elements of claim 1, no *prima facie* case of obviousness has been established.

Since the rejection fails to provide a proper motivation to combine the Darbut and the Killion references, and since the proposed combination of references would, even if combined, fail to disclose or suggest each and every element of the rejected claims, Applicants respectfully submit that no *prima facie* case of obviousness has been established with respect to 1, 3, 4, 6, 8-10, 12, 17, 34, and 36-45. Accordingly, Applicants respectfully request that the rejection of claims 1, 3, 4, 6, 8-10, 12, 17, 34, and 36-45 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

#### **REQUEST FOR INTERVIEW**

Applicants respectfully request, prior to the issuance of an action on the merits, that the Examiner grant a personal interview with Applicants' representative in order

to discuss the Office Action, and the differences between the cited prior art and the subject matter cited in the claims.

Applicants' representative will telephone the Examiner in the near future in an attempt to schedule this personal interview. However, as Applicants' representative cannot anticipate when this action will be scheduled for further action by the Examiner, it is requested that the Examiner contact Applicants' representative by telephone, at the number given below should a specific date for the interview have not been scheduled when the Examiner takes this action up for further action. Every effort will be made to meet the Examiner's scheduling preference.

#### **CONCLUSION**

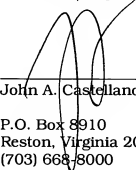
In view of the above remarks and amendments, Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicants do not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John A. Castellano at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. **08-0750** for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,  
HARNES, DICKEY, & PIERCE, P.L.C.

By

  
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